

Staff Report 09

LESSEE:

David L. Strong and Sharon H. Strong; Donald L. Strong and Katherine Miller Strong; Virginia McAfee Nix and David William Nix, as Trustees of the Nix Living Trust, Dated July 19, 2013; Robert Keith McAfee, Jr. and Jeannette Louise McAfee; and Peter Kirk McAfee and Deborah Kay McAfee

APPLICANT:

Ryan Crowley and Nicole Crowley, as Trustees of the Crowley Family Living Trust, Dated September 17th, 2010

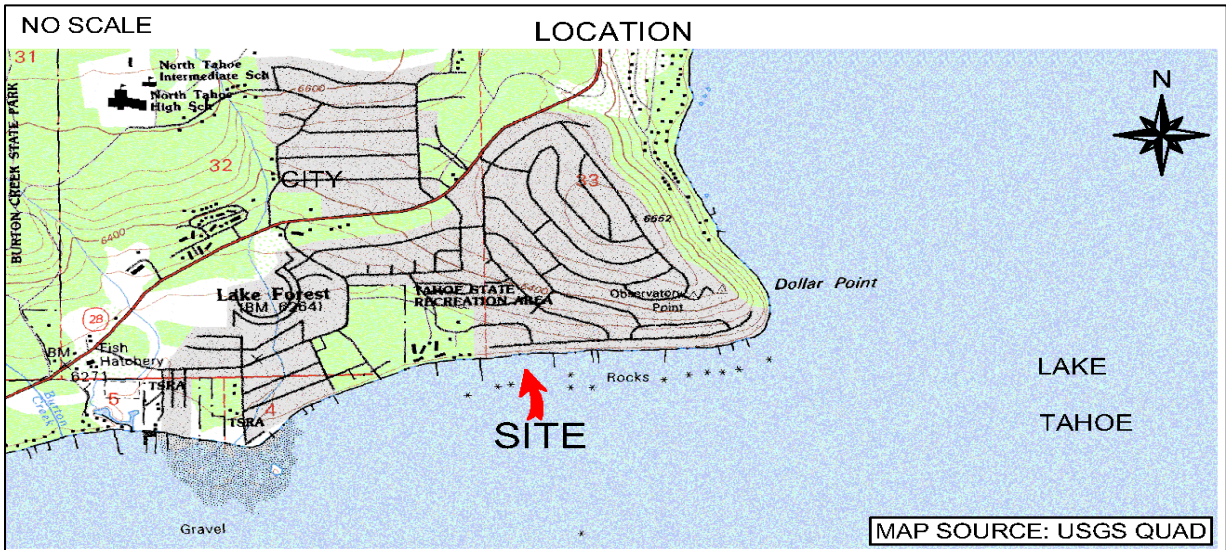
PROPOSED ACTION:

Termination and Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land, in Lake Tahoe, adjacent to 3212 Edgewater Drive, near Tahoe City, Placer County (as shown in Figure 1).

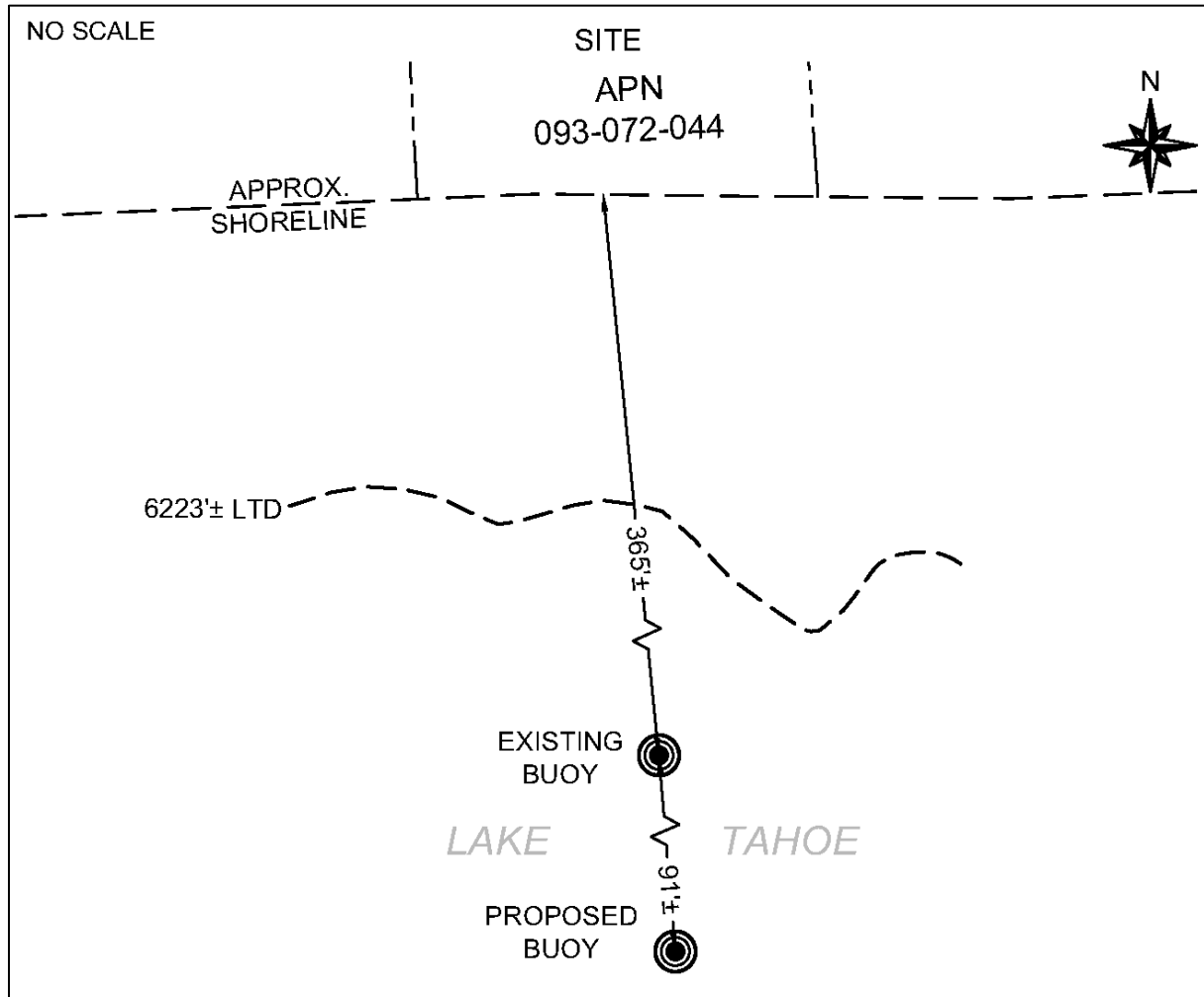
Figure 1. Location



AUTHORIZED USE:

Use and maintenance of one existing mooring buoy previously authorized by the Commission; and installation, use and maintenance of one mooring buoy not previously authorized by the Commission (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

TERM:

10 years; beginning May 1, 2023.

CONSIDERATION:

\$546 per year, with an annual Consumer Price Index adjustment; and \$236 for the unauthorized occupation of state land from June 21, 2022 through April 30, 2023.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no than \$1,000,000 per occurrence.
- Lessee expressly acknowledges that a permit from the Tahoe Regional Planning Agency (TRPA) is required for the Authorized Improvements and failure to obtain a permit from TRPA and maintain compliance with that permit may result in TRPA imposing civil penalties and will constitute a breach of the lease.
- Lessee shall not store any personal items or construct any improvements in the Public Trust easement which may impair the public's right of access for navigation, fishing, and public trust consistent recreational uses.
- Lessee agrees and acknowledges that the hazards associated with climate change may require additional maintenance or protection strategies regarding the improvements on the lease premises.
- Within 60 days of completing the installation of authorized improvements, Lessee will provide Lessor with photographs and a set of "as-built" plans that will show where the improvements have been placed. Lessor shall then replace Exhibit A, Land Description, and Exhibit B, Site and Location Map, to the Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by the Lessor's Executive Officer or designee, and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The replaced Exhibits shall be incorporated in the Lease as though fully set forth therein.
- Lessee agrees the provision of Section 3, Paragraph 8 shall also extend to the period of Lessee's unauthorized occupation of state-owned land from September 24, 2020 through April 30, 2023.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, 6503.5, and 6505.5; California Code of regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On June 21, 2018, the Commission authorized a General Lease – Recreational Use to David L. Strong and Sharon H. Strong; Donald L. Strong and Katherine Miller Strong; Virginia McAfee Nix and David William Nix, as Trustees of the Nix Living Trust,

Dated July 19, 2013; Robert Keith McAfee, Jr. and Jeannette Louise McAfee; and Peter Kirk McAfee and Deborah Kay McAfee for the use and maintenance of one existing buoy, not previously authorized by the Commission in Lake Tahoe, adjacent to 3212 Edgewater Drive, near Tahoe City, Placer County ([Item 27, June 21, 2018](#)). That lease will expire June 20, 2028.

On September 24, 2020, ownership interest in the upland parcel was transferred to Ryan Crowley and Nicole Crowley, as Trustees of the Crowley Family Living Trust, Dated September 17th, 2010. The Lessee has not been in contact with staff since the change in ownership; however invoices for the lease were paid through June 21, 2022. Staff recommends terminating the existing lease. The proposed termination date is September 24, 2020, the day the Applicant took ownership of the upland parcel. The Applicant is applying for issuance of a General Lease – Recreational Use for the use and maintenance of one mooring buoy previously authorized by the Commission; and the installation, use and maintenance of one mooring buoy not previously authorized by the Commission. Both mooring buoys were registered with TRPA on February 15, 2023 (Registration No. 11365).

Because invoices for the lease were paid through June 21, 2022, staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$236 for the period of June 21, 2022 through April 30, 2023. The lease provisions regarding indemnity will apply from September 24, 2020, when the Applicant took ownership of the upland, through April 30, 2023, the day before the beginning of the new lease.

The existing mooring buoy and proposed mooring buoy are privately owned and maintained and facilitate recreational boating. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust land. (Pub. Resources Code, § 6503.5.)

The proposed buoy will be located directly lakeward of the upland property and will occupy a relatively small area of the lake. The proposed lease does not alienate the State's fee simple interest or permanently impair public rights.

The lease is limited to a 10-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land and restore the lease premises to their original condition. The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to

compensate the people of the State for the occupation of the public land involved.

CLIMATE CHANGE:

Climate change significantly affects inland non-tidal lakes such as Lake Tahoe. The frequency and severity of natural disasters like flooding, wildfire, drought, extreme heat, and storms are increasing throughout the state of California, including the Sierra Nevada mountains, and will continue to accelerate through the end of the century. Structures along the shores of inland lakes are particularly vulnerable to the more frequent and extreme weather events and shifts in seasonal characteristics.

According to [California's Fourth Climate Change Assessment](#), released in 2018, the most significant impacts of climate change in the Sierra Nevada Region are more intense heat, precipitation extremes, declining snowpacks, and changes in streamflow timing. The long-term warming trend will lead to warmer and shorter winters, and longer and dryer summers. Successive dry and warm winters are resulting in minimal snowpack, increased winter streamflows and floods, and decreased spring and summer runoff. Prolonged low lake levels will become normal. Low lake level conditions can create more expansive beaches and increased shoreline access in dry months. However, these conditions interfere with boat launching and mooring facilities. This impact is most noticeable where the facilities are sited on shallow, low gradient lake bottom locations.

Dry winters will be punctuated with exceedingly wet years where prolonged and excessive precipitation can produce flash floods. High precipitation in these years will result in higher lake levels, causing beaches to narrow and reducing public access. Extra saturation of the soil can increase erosion, especially following intense wildfire seasons. Surface runoff water may carry more sediment into the lake, adversely impacting water quality and clarity.

Climate change may also lead to more intense and unpredictable storm events and winds. These storms may deviate from prevailing wind patterns for the region. These winds can accelerate shoreline erosion in some areas or cause erosion in areas not typically subject to erosion. Additionally, these winds can increase wave damage on structures and boats along the lake.

Improvements authorized under this lease may require more frequent inspection and maintenance to ensure they are not displaced during storm events. Watercraft moored to buoys, piers, or docks are also vulnerable to damage from high wind events and wave damage.

CONCLUSION:

For all the reasons above, staff believes approval of this lease assignment will not substantially interfere with Public Trust needs at this location, at this time, nor for the remaining term of this lease; is consistent with the common law Public Trust Doctrine; and is in the best interest of the state.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant as prior lessee may be prohibited from installing the one mooring buoy and required to remove the other mooring buoy and restore the premises to its original condition. The lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Leading Climate Activism" and Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

4. **Existing Mooring Buoy:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Installation of One Mooring Buoy: Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(3).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905, subdivisions (a)(2) and (c)(3).

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Existing Mooring Buoy: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Installation of One Mooring Buoy: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(3).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Terminate, effective September 24, 2020, Lease 9456, a General Lease – Recreational Use, issued to David L. Strong and Sharon H. Strong; Donald L. Strong and Katherine Miller Strong; Virginia McAfee Nix and David William Nix, as Trustees of the Nix Living Trust, Dated July 19, 2013; Robert Keith McAfee, Jr. and Jeannette Louise McAfee; and Peter Kirk McAfee and Deborah Kay McAfee.
2. Accept compensation from the Applicant for the unauthorized occupation of State land for one existing mooring buoy in the amount of \$236 for the period of June 21, 2022 through April 30, 2023.
3. Authorize issuance of General Lease – Recreational Use to the Applicant beginning May 1, 2023, for a term of 10 years, for the use and maintenance of one mooring buoy previously authorized by the Commission and installation, use and maintenance of one mooring buoy not previously authorized by the Commission; annual rent in the amount of \$546, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

4. Authorize the Executive Officer or designee to replace Exhibits in the lease upon submission, review, and approval of as-built plans detailing the final location of the improvements following construction.